DOC. NO. X07-HHD-CV-16-6069748-S	:	
CENTERPLAN CONSTRUCTION COMPANY, LLC	:	SUPERIOR COURT
	:	COMPLEX LITIGATION DOCKET AT HARTFORD
Plaintiffs,	:	
v.	:	
CITY OF HARTFORD	:	
Defendants.	:	OCTOBER 30, 2018

Memorandum of Decision Denying Summary Judgment

The city says it shouldn't have to honor a ground lease it made with the plaintiff DoNo for land near the city's new baseball stadium. It says that when it terminated its stadium design and construction contracts with DoNo and its affiliate Centerplan these terminations—justified or unjustified—were grounds for terminating the ground lease. The city says it's a simple matter of plain words in a contract and can be resolved as a matter of law. It asks for a summary judgment on the part of its counterclaim that raises this issue: the eighteenth count. But the passages connecting the design contract to the construction contract to the ground lease lead only to a dead end.

All of the key passages are blocked by the need for a *justified* ground at the start and on every branch of the contracts. The closest provision in the city's favor is section

8.1 (j) in the construction contract. Read in isolation it says any "Event of Default" can permit termination. The city argues that someone must be in default, so even if the city itself were in default, the city could use that as a basis to terminate the ground lease. The problem is this section is merely a subsection of 8.1, which begins: "the following shall constitute a '*Developer* Default.'" So before the city can terminate the ground leases based on the other agreements there must be a developer default. It turns, therefore, not on inevitable consequences but on a factual finding that a developer default occurred. The developer hotly insists it didn't default, so the court can't give the city what it wants—a summary judgment merely from the face of the contract.

Still, the city decries what it sees as the inequity of forcing it to work with DoNo while having with it the worst relationship possible. The city says that sustaining the lease would be like granting specific performance. And it says the Appellate Court in 2007 in *Battalino v. Patten* held that equitable considerations matter in specific performance.[1] It points out that one Superior Court decision used that case and this principle to strike a claim for specific performance in a 2009 Derby development lawsuit, *Ceruzzi Derby Redevelopment, LLC v. Derby*.[2]

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[1] 100 Conn. App. 155, cert. denied, 282 Conn. 924.

[2] Superior Court, complex litigation docket at Stamford, Docket No. X05 CV 08 5009782 S (July 1, 2009, *Blawie, J.*).

But *Ceruzzi* is no help here. The court in that case accepted all of the developer's claims as true and struck a specific performance claim because the claims couldn't support specific performance as a matter of law.[3] That's not what the city is asking the court to do here. It wants the court to hold for it by applying the plain language of the contract terms—not by assuming the claims against it are true.

The plain language of the contracts doesn't allow the city to terminate the ground lease in the absence of a developer default. Therefore, the city's motion must be denied. This may be deeply inconvenient to the city. But it would be deeply inequitable to terminate a contract on equitable grounds without first weighing the equities for and against it.

The court denies the city's motion for summary judgment.

BY THE COURT:

Moukawsher, J.

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[3] *Id.*